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18 Attorneys for Defendants State Farm Mutual
19 Automobile Insurance Company (erroneously
20 sued as State Farm Mutual, Inc.), State Farm
21 General Insurance Company (erroneously sued
22 as State Farm General Incorporated), and State
23 Farm Life Insurance Company

24 CARMEL STEVENS and LADALE
25 JACKSON, individually and on behalf
26 of all similarly situated,

27 Plaintiffs,

28 v.

29 STATE FARM MUTUAL, INC.;
30 STATE FARM GENERAL
31 INCORPORATED; STATE FARM
32 LIFE INSURANCE COMPANY and
33 DOES 1 through 50, inclusive,

34 Defendants.

CASE NO. 2:22-cv-06362 FLA (MAAx)

**DECLARATION OF MARCELLUS
MCRAE IN SUPPORT OF
DEFENDANTS STATE FARM
MUTUAL AUTOMOBILE
INSURANCE COMPANY, STATE
FARM GENERAL INSURANCE
COMPANY, AND STATE FARM
LIFE INSURANCE COMPANY'S
RESPONSE TO COURT'S JULY 28,
2023 ORDER TO SHOW CAUSE**

Action Filed: July 6, 2022
FAC Filed: December 5, 2022
Trial Date: None set

1 I, Marcellus McRae, declare as follows:

2 1. I am an attorney duly licensed to practice law before all the courts of the
3 State of California as well as the United States District Court for the Central District of
4 California. I am a partner at the law firm Gibson, Dunn & Crutcher LLP, and am one
5 of the attorneys representing Defendants State Farm Mutual Automobile Insurance
6 Company, State Farm General Insurance Company, and State Farm Life Insurance
7 Company (collectively, “Defendants”) in the above-entitled action. I provide this
8 declaration in support of Defendants’ Response to the Court’s July 28, 2023 Order To
9 Show Cause. Unless otherwise stated, I have personal knowledge of the matters herein,
10 and if asked to testify thereto, I would do so competently.

11 2. I have been practicing law for approximately 34 years. I joined Gibson,
12 Dunn & Crutcher LLP in February 1998 and am now a Co-Chair of the firm’s Trials
13 Practice Group. I have extensive experience litigating a wide variety of civil cases, and
14 have first chaired numerous trials in both federal and state courts.

15 3. Based on my 34 years of experience as an attorney and my knowledge of
16 the allegations and facts in this action, I believe that the estimate that it will take
17 Plaintiffs’ counsel at least 256 hours to litigate this action through trial is reasonable and,
18 in fact, very conservative.

19 4. Given the nature of the complaint in this action, which includes allegations
20 that are based on technical scientific issues, the estimate that Plaintiffs’ counsel spent at
21 least 15 hours investigating the facts, researching the relevant law, and drafting the
22 complaint is a reasonable and conservative estimate.

23 5. In light of my familiarity with the motion to dismiss that Defendants filed
24 in this action, and having reviewed Plaintiffs’ opposition to that motion, the estimate
25 that Plaintiffs’ counsel spent at least 10 hours preparing the opposition is reasonable and
26 conservative.

27 6. Because of the novel and complex nature of Plaintiffs’ claims, litigating
28 this action will likely require multiple depositions, motions practice, and significant

1 preparation for trial. Based on my review of the allegations in Plaintiffs' complaint and
2 the issues identified in the parties joint Rule 26(f) report, I expect that litigating this case
3 through trial would require extensive expert analysis and testimony regarding the Mayo
4 Clinic's test for evaluating the estimated Glomerular Filtration Rate ("eGFR") of the
5 kidneys, including expert analysis and testimony regarding whether the Mayo Clinic
6 eGFR test is intrinsically biased against African American individuals. I also expect
7 there will be lay witness testimony regarding the methodologies that Defendants use to
8 calculate life insurance premiums, and expert analysis and testimony regarding the
9 impact, if any, that eGFR scores may have on those methodologies. Given the
10 complexity of these issues, and based on my extensive experience litigating complex
11 civil cases, I believe six witnesses (both expert and lay witnesses) is a conservative
12 estimate of the number of witnesses that will likely be deposed in this action. Further,
13 in my experience, preparing for and taking or defending a deposition requires far more
14 than 8 hours (particularly given that significant depositions like those that will occur in
15 this case often last 7 hours), and thus the estimate that Plaintiffs' counsel will require at
16 least 8 hours to prepare for and take or defend the deposition of each witness is a
17 reasonable and conservative estimate.

18 7. Based on my experience and my knowledge of the allegations and facts in
19 this action, I expect that, if this case were to proceed past the pleadings stage, Defendants
20 would file a motion for summary judgment and at least one *Daubert* motion. I have both
21 drafted and opposed numerous summary judgment motions, and, in my experience,
22 drafting an opposition to a dispositive motion (like a summary judgment motion)
23 requires extensive review of both the record in the case and the law governing the claims,
24 and typically takes well over 25 hours of attorney time. The estimate that Plaintiffs'
25 counsel will spend at least 25 hours to defend against a summary judgment motion is
26 thus a reasonable and conservative estimate. I have also drafted and opposed numerous
27 *Daubert* motions, and, in my experience, drafting an opposition to a *Daubert* motion
28 requires extensive review of the expert's report, the expert's deposition, the reports and

1 depositions of other experts in the case, and relevant case law, and typically takes well
2 over 10 hours of attorney time. The estimate that Plaintiffs' counsel will spend at least
3 10 hours to defend against a *Daubert* motion is a conservative estimate.

4 8. Based on my trial experience and my knowledge of the allegations and facts
5 in this action, I believe that an estimate of at least 100 hours to prepare for a 6-day trial,
6 which would include preparing multiple witnesses, completing pre-trial filings, and
7 preparing and responding to motions in limine, is a conservative estimate. Given my
8 knowledge of the allegations and facts of this action, I also believe that the estimate that
9 any trial would take at least six days is reasonable and conservative, and is consistent
10 with the 6-8 day estimate by the parties in the joint Rule 26(f) report.

11 9. Based on my experience litigating numerous trials, each day of trial will
12 require far more than 8 hours of attorney time, as attorneys participating in trial do not
13 merely attend the trial itself, but also must prepare for the next trial day and address legal
14 and factual issues that invariably arise during trial. Defendants' estimate that Plaintiffs'
15 counsel will work at least 8 hours per day during trial for each of the 6 days is a
16 reasonable and conservative estimate.

17 10. Based on my experience and my knowledge of the allegations and facts in
18 this action, there are a number of other attorney tasks beyond those I have mentioned
19 above that will likely be required if this action proceeds through trial, including
20 propounding and responding to written discovery, reviewing and producing documents
21 relevant to the claims in the action, and related discovery motions practice. That those
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1 tasks are not accounted for in the estimate of 256 hours further confirms that this
2 estimate is reasonable and very conservative.

3
4 I declare under penalty of perjury under the laws of the United States of America
5 that the foregoing is true and correct.
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7 Executed on this 10th day of August, 2023, at Los Angeles, California.
8

9 *Marcellus McRae*
10 Marcellus McRae
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